them are not surprising and such absence cannot *per se* exculpate the accused from liability. In my judgment, the totality of the evidence point conclusively to the fact that the accused carried the blue cloth bag with its incriminating contents as explained by Busra and Muid notwithstanding the absence of fingerprints on them.

In my judgment, the falsity of the cautioned statement was brought to the fore when the accused was grilled under cross-examination by the learned Deputy. It is my finding of fact, after dutifully reviewing the totality of the evidence both from the prosecution and the defence, that the accused had possession and was paid to traffick in dangerous drugs, to wit, 16.735 kilogrammes of raw opium on the date and time in question as per the charge. For the reasons adumbrated above, the accused had not rebutted the aforesaid statutory presumptions on the balance of probabilities. Consequently, the prosecution had proved its case beyond reasonable doubt and I found the accused guilty of the offence for which he was charged and convicted him. I sentenced him to death.

PUBLIC PROSECUTOR

v.

SAUYAH BTE MATASAM & ANOR.

HIGH COURT, TAWAU
TUAN IAN H.C. CHIN J.
[CRIMINAL TRIAL NO. T(47) - 24 OF 1993]
26 MARCH 1994

DANGEROUS DRUGS: Charge under s. 39B(1)(a) Dangerous Drugs Act 1952 - Whether accused had rebutted the statutory presumptions of knowledge and trafficking under the Act - Age of accused - Whether accused could be sentenced to death.

EVIDENCE: Evidence of age - Whether there was sufficient evidence to show that accused was 18 years old at the time of commission of the offence.

The accused, Sauyah, was charged under s. 39B(1)(a) of the Dangerous Drugs Act (Revised 1983), of trafficking in 822.7g of cannabis, which was amended by the Court to read 92.7g as the chemist only tested this amount to confirm that the substance was cannabis.

Sauyah had been searched when she disembarked from a boat in Lahad Datu, Sabah. Two packages of dried leaves (cannabis) were found in her handbag. In the police station she was body searched. A package was found tucked in between her belly and the waist band of the trousers she had on. Her inside trouser legs had also been stitched to form compartments which contained 2 more packages. Sauyah wore a sarong to conceal the compartments.

Sauyah admitted to carrying the packages in her handbag and stitched compartments but denied the one in her waistband. She claimed a man had handed her the packages in Philippines to be delivered in Kota Kinabalu. She denied knowledge that the dried leaves were cannabis. She also claimed to have informed the police who searched her about the packages in her trouser legs.

Held:

[1] Although there is nothing in the accused's' demeanour to suggest she is lying in Court, this does not automatically mean she is telling the truth. The accused's own testimony that she informed the police about the packages in her trouser legs and handbag creates suspicion as

she had various dutiable items on her which she did not point out to the police. It could therefore be safely concluded she knew the four (or five) packages she carried contained things (cannabis) which were against the law.

[2] The accused's confidence in Court was simulated as details about the person who handed over the packages were avoided and only elicited during cross-examination. Overall, she gives the impression that she had knowledge that the packages were cannabis and on a balance of probabilities she has not rebutted the presumption of knowledge. She has thus failed to rebut the presumption of trafficking.

[3] The death sentence cannot be meted out as there is a lack of evidence as to whether the accused was 18 years of age at the date of the commission of the offence. The two thumbprints in a form called HNR3, an application form for replacement of missing identity card, allegedly completed by the accused, were never compared to the accused's own thumbprints. There is a doubt if she claims to be who she is as her accent leads one to believe she may be a Filipino. In the circumstances, the accused is to be detained at the pleasure of His Excellency, the Yang DiPertua Negeri Sabah.

[Accused convicted].

Cases referred to:
Abraham Ho Ah Loke v. William Manson-Hing [1949] MLJ 37 ***(refd)***
PP v. Boy Bin Islais [1993] 1 AMR 19:766; [1993] 2 CLJ 470 ***(refd)***

Legislation referred to:
Dangerous Drugs Act 1952, s. 2, 39B(1)(a), (2)

For the public prosecutor - Zahir Hussein Ahmad Shah, DPP
For the accused - Chung Thau Yong

JUDGMENT

Ian H.C. Chin J:
Sauyah bte Matassan ("the accused") was initially charged with the offence of drug trafficking and the charge against her reads:

> That you, on 26 December 1992, at about 8.30 a.m., at Perairan Laut Lahad Datu, in the District of Tawau, in the State of Sabah, did on your own behalf, traffic in a dangerous drug, to wit 822.7 grammes of cannabis, in contravention of s. 39B(1)(a) of the Dangerous Drugs Act, (Revised 1983) and you have thereby committed an offence punishable under s. 39B(2) of the said Act.

The evidence against the accused at the close of the case for the prosecution are these. On 26 December 1992, the accused was found in a boat that was approaching the town of Lahad Datu, Sabah. The boat was escorted by a marine patrol boat to the jetty of the Marine police in Lahad Datu. After the accused, together with many other passengers, had disembarked, her handbag, which was slung over her body, was searched and two packages wrapped in a piece of cloth and containing dried leaves were found. Many other items concealing dried leaves were also recovered from the boat but it could not be ascertained as to whom those items belong to. The accused was taken to the police station where she was body searched by a woman police officer. It was in this search that one package was found tucked in between her belly and the waist band of a trousers she was wearing. Two other packages containing dried leaves were also found, one in each of the trouser legs. The bottoms of the trouser legs were rolled up half-way and stitched to form compartments or pockets into which the packages were placed. The accused had a piece of sarong over her which concealed the two packages and pockets from sight. The dried leaves were sent to a chemist who conducted tests on only 92.7 gms of samples out of the 822.7 gms of dried leaves and he came to the conclusion that the dried leaves were cannabis. The evidence show an unbroken chain in the custody of the exhibits and Mr. Chung Thau Yong, Counsel for the accused, impliedly agreed when he took no issue. I amended the weight of the cannabis to read 92.7 gms before I called the accused to answer the amended charge. I was of the view that the evidence, at the close of the prosecution case, had established a case beyond reasonable doubt, since the accused was found to be in possession of the cannabis which gave rise to the presumption that she knew she was in possession of cannabis. The accused elected to give evidence on oath.

She admitted to carrying all the items found in her handbag and in the trouser legs turned into pockets but she denied that there was any package tucked in between her belly and the waist band of her trousers. It was a man called Moktar who gave her the 4 packages on 24 December 1992 while she was in the Philippines and after she had finished packing her things for

the trip back to Sabah. These 4 packages were to be delivered to a Munip in Kota Kinabalu. She had earlier returned from Sabah on 12 December 1992. She said that she did not know what she carried was cannabis. She said that she told the policeman who discovered the two packges in her handbag that there were two other packages in her trousers and that the policeman had replied that she will be dealt with at the police station. She also told this to the policewoman before she searched her. I must confess here that there is nothing in her demeanour to suggest that she is lying in Court but that does not mean that she is automatically to be regarded as telling the truth. It is against all the evidence that had been produced that I have to determine whether she had created any doubt, on a balance of probabilities, as to whether she had knowledge that what she carried was cannabis, direct evidence of which was lacking and the knowledge was presumed at the close of the case for the prosecution. I will now turn to the submissions of the learned Counsel for the accused.

Mr. Chung submitted that the fact that the accused had told the policeman and the policewoman, respectively at the jetty and at the police station as to where the 4 packages could be found in her handbag and in the trouser legs made into pockets are evidence supportive of the fact that the accused did not know what she carried was cannabis. This begs the question - how did the accused know the police were looking for the four packages? The police normally arrest on suspicion that an infraction of the law had been committed. One normally associates the police' action of arresting someone with that suspicion. Therefore, when the accused was arrested, it must have occurred to her that she had done something wrong. She had four boxes of various items which may be dutiable and for which the police could also have arrested her for smuggling but yet she did not refer to those items in the four boxes but instead referred to the packages containing the dried leaves which turned out to be cannabis. It could therefore be safely concluded that she told the police of the four packages, it matters not that she disputed that they were only four and not five, because she knew that the four packages she carried contained things which were against the law and that is why she referred to the packages and not to the other items in the box.

It was next argued by Mr. Chung that the accused would have thrown the four packages away if she had known there was cannabis inside while the boat she was in was being escorted by the marine police to the jetty in Lahad Datu. The short answer to that is this. If she had thrown the things, which would float on water, it would have been witnessed not only by the marine police who were following from behind in their patrol boat but by 58 other passengers in the boat. Only an imbecile would think of doing that and the accused is not one and this explains why she did not throw the incriminating items overboard.

The fact that the trouser legs had been turned into pockets to contain two packages of cannabis should not be viewed adversely against the accused because, Mr. Chung argued, the accused could not find places in her boxes and in her handbag for all the four packages. But there was also the sarong which the accused had pulled over her body and which effectively concealed the two packages from sight and which she still had on when it was very hot in the day.

It was finally submitted by Mr. Chung that her evidence came through after her cross-examination unscathed. I must admit that she did not slip up in her evidence but Mr. Chung had on her behalf put to the prosecution at one stage that there were 3 packages on her body, one tucked in between her belly and the waist band of her trousers and the other two in the pockets formed by the legs of the trousers. It was later put to another witness of the prosecution that there were only those two packages recovered from the trouser legs and there was no such package at the belly. Mr. Chung explained that he had made a mistake when maintaining that there were three instead of two packages at the said places. I will accept that explanation as regards, what I usually term, the changing of stance. But I also remind myself of what was said in *Abraham Ho Ah Loke v. William Manson-Hing* [1949] MLJ 37, at p. 42:

> In my view the credibility of a witness's story should be based on its inherent consistency with the fact and circumstances alleged therein. Is the story probable? is the test. Weight is added to this initial probability by other factors; corroboration by other witnesses will strengthen it; credible extrinsic circumstantial evidence will do the same; and lastly the demeanour and tone in which the witness gives evidence will add to fortify (if favourable) the inherent probability of the story. But the last named ingredient is in my opinion the least

> weighty element in the credibility of a story; the frank demeanour the confident tone and the righteous indignation can all be simulated by a witness and are no substitute for the hard-core of good evidence which lies in inherent probability and extrinsic corroboration.

I find her confidence when she gave evidence to have been simulated and this is evident by the fact that she avoided all details with regards to the person Moktar and with regard to how she came to obtain possession of the 4 packages. She treaded very gingerly and it was through cross-examination that the details were elicited. All these give me the impression that she may not be telling the truth as regards whether she knew the packages contain cannabis. I therefore also find that she was, apart from the 4 packages, also in possession of the package tucked in between her belly and the waist band of her trousers.

I am of the conclusion that she had not on a balance of probability rebutted the presumption of knowledge. As for trafficking, s. 2 of the Dangerous Drugs Act 1952, appear to suggest that the acts of possession and concealment of the accused give rise to trafficking irrespective of the amount of cannabis. I therefore also hold that the accused had failed to rebut the presumption of trafficking. I therefore convict the accused of the offence of trafficking in the 92. 7 gms of cannabis under s. 39B(1)(a) of the Dangerous Drugs Act 1952. As for the sentence of death, Mr. Zahir Hussein Ahmad Shah, the learned Deputy Public Prosecutor, referred the Court to the following evidence as being sufficient to establish that the accused was at least 18 year old on 26 December 1992, the date of the commission of the offence. The accused was found in possession of a "Resit Laporan Kehilangan Kad Pengenalan" which contains the following particulars:

(1) Name Sauyah Bte Matassan

(2) Address: Kampung Baitam
89720 Membakut

(3) Identity Card No.: H0713643

(4) Police Report No.: 9180/92

(5) Birth Certificate No.: 585/69

This document bears two thumbprints and a photograph of a female. A clerk of the National Registration Department was called to testify and she produced an abstract of the birth certificate No. 585/69 referred to in the said receipt. She also produced a copy of a completed application form, dated 16 June 1981, called HNR 3, for an identity card. This form HNR 3 which has two thumbprints of the applicant for an identity card and the name of the applicant was there stated to be "Sauyah Bte Matassan". The learned Deputy after referring to those evidence which I have just set out then referred to my decision in *PP v. Boy Bin Islais* [1993] 1 AMR 19:766; [1993] 2 CLJ 470 and he submitted that the date of birth, stated to be 22 May 1969 and referred to in the said abstract from the Register of Births and Deaths is *prima facie* evidence of the date of birth. But this still begs the question of whether the said abstact referred to the accused. I have adverted to the form HNR 3 which had two thumbprints of the person named therein as Sauyah bte Matassan. These two thumbprints could be compared to that of the accused and if they match, the accused would have to rebut the *prima facie* evidence. But the fingerprints of the accused were never compared to that in the Form HNR3 nor with the fingerprints in the said receipt. The accused had stated that she was born in the Philippines. When she gave evidence in Court she definitely sounded like a Fillipino when she talked in English which the accused did on and off. Therefore, I am left in doubt as to whether the abstract of the birth certificate refers to the accused or not. This easy to obtain but very important piece of evidence, that is the comparison of the thumbprints in the HNR3 and in the receipt with that of the accused, would establish the link between the accused to the abstract of birth if the thumbprints match. This evidence is lacking and thus creates the doubt as to whether the accused was 18 at the relevant time. It is more doubtful when the dentist who testified said that he could not say whether the accused was 18 at the time she committed the offence though he said the accused was 18 on 5 August 1993.

Given what I have said, I sentence the accused to be detained at the pleasure of His Excellency the Yang di-Pertua Negeri Sabah. The cannabis is to be destroyed in the compound of the Court after the expiry of the period of appeal or after disposal of the appeal whichever is later.